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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Carl Davis, individually; and Deborah
Davis, individually, and as husband and
wife

Plaintiffs,

vs.

Sybrant Construction, LLC, an Arizona
corporation; Sandi Sybrant and John Doe
Sybrant, husband and wife

Case No.: _____

COMPLAINT

Plaintiffs Carl Davis and Deborah Davis, for their Complaint against Defendants,
allege as follows:

NATURE OF THE CASE

1. The Fair Labor Standards Act is designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. *See* 29 U.S.C. §§ 206(a), 207(a).

1 2. Employers must compensate employees for all work that employers permit
2 employees to perform. *See* 29 C.F.R. § 785.11. In such cases, it is the responsibility of
3 employers' management to ensure that work is not performed if management does not
4 desire for such work to be performed. *See* 29 C.F.R. § 785.13. Employers may not accept
5 the benefits of employees performing work without compensating the employees for their
6 work. *Id.*

7 3. Plaintiffs bring this action against Defendants for unlawful failure to pay
8 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et*
9 *seq.* ("FLSA").
10

11 4. Defendants had a consistent policy and practice of requiring its employees to
12 work well in excess of forty (40) hours per week without paying them time and a half for
13 hours worked over forty (40) hours per week.

14 5. Plaintiffs seek to recover unpaid overtime compensation and an equal amount
15 of liquidated damages, including interest thereon, statutory penalties, attorneys' fees, and
16 costs pursuant to 29 U.S.C. § 216(b).
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18 **JURISDICTION AND VENUE**

19 6. This Court has jurisdiction over the subject matter and the parties hereto
20 pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

21 7. Venue is proper under 28 U.S.C. § 1391(b) because Defendants reside within
22 the State in which this District Court is located and because a substantial part of the
23 events or omissions giving rise to this matter occurred in this District.
24
25

8. The named Defendants, by virtue of their own acts and omissions or by virtue of the acts and omissions committed by one or more of their agents, employees or representatives, as described herein, have conducted business or caused events to occur within the District of Arizona and, more particularly, within Maricopa County, Arizona, as more particularly described herein so as to give rise to both subject matter and personal jurisdiction of this Court.

PARTIES

9. At all times material hereto, Plaintiffs were residents of Maricopa County, Arizona.

10. At all times material hereto, Sybrant Construction, LLC was incorporated in the State of Arizona with its principal place of business in Maricopa County, Arizona.

11. Upon information and belief, at all times material hereto, Defendant Sandi Sybrant, was and continues to be a resident of Maricopa County, Arizona.

12. John Doe Sybrant is Sandi Sybrant's husband. Sandi and John Doe Sybrant have caused events to take place giving rise to this Complaint as to which their marital community is fully liable.

13. Upon information and belief, and consistent with the information available from the Arizona Corporation Commission, Defendant Sandi Sybrant is the owner of Sybrant Construction, LLC

14. At all relevant times, Plaintiffs were “employees” of Defendants, as defined by 29 U.S.C. § 203(e)(1).

15. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendants.

1 16. At all relevant times, each of the Defendants was and continues to be an
2 “employer” as defined in 29 U.S.C. § 203(d).

3 17. Each of the Defendants should be deemed an “employer” for purposes of the
4 FLSA including, without limitation, 29 U.S.C. § 216.

5 18. Defendant Sandi Sybrant is deemed an “employer” for purposes of the
6 FLSA, including, without limitation, 29 U.S.C. §216.

7 19. All Defendants are co-equally liable for all matters.

8 20. Defendant Sandi Sybrant made all decisions on the daily activities of his
9 employees and is therefore individually liable under the FLSA.

10 21. Defendant Sandi Sybrant makes all decisions regarding pay policies for
11 Sybrant Construction, LLC

12 22. Defendant Sandi Sybrant exerted financial control over Sybrant Construction,
13 LLC

14 23. Defendant Sandi Sybrant exerted operative control over Sybrant
15 Construction, LLC

16 24. Defendant Sandi Sybrant has the power to close Sybrant Construction, LLC

17 25. Defendant Sandi Sybrant has the power to hire and fire employees.

18 26. Defendant Sandi Sybrant hired managerial employees.

19 27. On information and belief, Defendant Sandi Sybrant maintained employment
20 records.

21 28. On information and belief, Defendant Sandi Sybrant dictated the corporate
22 message in pending labor investigations.

1 29. Defendant Sandi Sybrant profited from the FLSA violations detailed in this
2 complaint.

3 30. At all times material to this action, each of the Defendants was and continues
4 to be an “enterprise engaged in commerce or in the production of goods for commerce”
5 as defined by 29 U.S.C. § 203(s)(1).

6 31. Plaintiffs engaged in commerce or in the production of goods for commerce
7 and are therefore individually covered under the FLSA pursuant to 29 U.S.C. §§206(a),
8 207(a)(1), 212(c).

9 32. Plaintiffs handled supplies, such as construction materials and tools, that
10 originated out of state.

11 33. Plaintiffs were involved in transacting business across state lines via
12 interstate telephone calls or the U. S. Mail which included taking new orders from
13 customers.

14 34. Plaintiffs were involved in ordering or receiving goods from out-of-state
15 suppliers.

16 35. Plaintiffs were involved in receiving of goods from out-of-state suppliers
17 by using the Defendants’ company credit card.

18 36. Plaintiffs also handled credit card transactions that involved the interstate
19 banking and finance systems.

20 37. On information and belief, at all relevant times, the annual gross revenue of
21 Defendants exceeded, and continues to exceed, \$500,000.00.

FACTUAL BACKGROUND

38. Sybrant Construction, LLC is a general contractor that provides construction management and design/build services to its clientele. Sybrant Construction, LLC provides all general construction services, design/build services, construction inspection services for building facilities, structures, dams, roads, and bridges.

39. Sybrant Construction, LLC hired Plaintiff Carl Davis in June of 2015 as a general contracting controller.

40. Plaintiff Carl Davis's job duties and responsibilities included coordinating vendors and sub-contractors for construction jobs. Plaintiff Carl Davis would be responsible for ensuring management's policies and procedures were being properly effectuated on the construction job sites.

41. Sybrant Construction, LLC hired Plaintiff Deborah Davis in June of 2015 as a safety officer.

42. Plaintiff Deborah Davis's job duties and responsibilities included monitoring company safety policies on each construction job and reporting back to her manager if there were any possible safety issues on the construction jobs. Plaintiff would also perform safety inspections pursuant to Defendants' policies.

43. Sybrant Construction, LLC compensated Plaintiffs on a salary basis.

44. Plaintiffs' pay did not fluctuate, it was a base salary.

45. Defendants withheld taxes out of Plaintiff's paycheck pursuant to IRS regulations.

46. Plaintiffs were non-exempt employee.

1 47. Each Plaintiff had no supervision or management responsibilities.

2 48. Each Plaintiff could neither hire nor fire employees.

3 49. Each Plaintiff had no authority to exercise significant independent judgment
4 on issues that affect the whole company when carrying out her job responsibilities.

5 50. Defendants managed, supervised, and directed all aspects of each Plaintiff's
6 job duties and responsibilities.

7 51. Each Plaintiff's primary duty was not the performance of work directly
8 related to the management or general business operations of Sybrant Construction, LLC
9 or its' customers.

10 52. Each Plaintiff's primary duty was not the performance of work requiring
11 advanced knowledge in a field of science or learning that was acquired by a prolonged
12 course of specialized intellectual instruction.

13 53. Each Plaintiff did not perform work requiring advanced knowledge.

14 54. Each Plaintiff did not perform work in a field of science or learning.

15 55. Each Plaintiff did not have an advanced degree and was not required to have
16 one to perform the work.

17 56. The knowledge required to perform the each Plaintiff's job responsibilities is
18 not acquired by a prolonged course of specialized intellectual study.

19 57. Each Plaintiff's work did not require consistent exercise of discretion and
20 judgment.

21 58. Each Plaintiff's work did not require them to analyze, interpret, or make
22 deductions from varying facts or circumstances.

1 59. Each Plaintiff's duties were carried out in a mechanical and routine manner
2 and they had no authority to make independent major decisions in performing those
3 duties.

4 60. Each Plaintiff's work did not require invention, imagination, originality, or
5 talent.

6 61. Each Plaintiff's work did not require creative or original analysis and
7 interpretation.

8 62. Each Plaintiff's regular schedule was five days per week. Plaintiffs were also
9 required to work on the weekends once to twice per month.
10

11 63. Plaintiffs would have to arrive at 5:00 am every day they were on the
12 schedule and were not able to leave work until at least 3:30 p.m. each weekday that they
13 were on the schedule.

14 64. Defendants also dictated that Plaintiffs would have to work one or two
15 weekend days each month.

16 65. Each and every week that Plaintiffs have worked their regular schedule, they
17 have worked over forty hours in a week.

18 66. By improperly classifying Plaintiffs as exempt employees, Defendants are
19 depriving Plaintiffs upwards of twenty hours of overtime pay each and every week.
20

21 67. Defendants did not pay Plaintiffs overtime.

22 68. Plaintiffs were not commissioned employees.

23 69. Commissions did not consist of more than one half of Plaintiffs' weekly
24 earnings.
25

1 78. In addition to the amount of unpaid wages owed to each Plaintiff, each
2 Plaintiff is also entitled to recover an additional equal amount as liquidated damages
3 pursuant to 29 U.S.C. § 216(b).

4 79. On information and belief, Defendants' conduct in failing to properly
5 compensate Plaintiffs, in violation of the FLSA, was willful.

6 80. Defendants have not made a good faith effort to comply with the FLSA.
7 Plaintiffs have been required to bring this action to recover their overtime compensation,
8 and their statutory liquidated damages, and as the direct and foreseeable result of
9 Defendants' conduct, Plaintiffs have incurred costs and attorneys' fees.
10

11 WHEREFORE, Plaintiffs respectfully request that judgment be entered in their
12 favor against Defendants:

- 13 a. Awarding Plaintiffs overtime compensation in the amount due for all of
14 their time worked in excess of forty (40) hours per week at a pay rate
15 equal to one and one-half times each Plaintiff's regular rate of pay while
16 at work for Defendants, in an amount proved at trial;
- 17 b. Awarding each Plaintiff liquidated damages in an amount equal to the
18 overtime award;
- 19 c. Awarding each Plaintiff reasonable attorneys' fees, costs, and expenses
20 of the litigation pursuant to 29 U.S.C. § 216(b);
- 21 d. Awarding each Plaintiff pre-judgment interest, at the highest legal rate,
22 on all amounts awarded under subsections (a) and (b) above from the
23 date of the payment due for that pay period until paid in full;
24
25

- 1 e. Awarding each Plaintiff post-judgment interest, at the highest legal rate,
2 on all awards from the date of such award until paid in full; and
3 f. For such other and further relief as the Court deems just and proper.

4 **COUNT TWO**
5 **DECLARATORY JUDGMENT**

6 81. Plaintiffs incorporate and adopt paragraphs 1 through 80 above as if fully set
7 forth herein.

8 82. Plaintiffs and Defendants have an overtime compensation dispute pending.

9 83. The Court has jurisdiction to hear each Plaintiff's request for declaratory
10 relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

11 84. Plaintiffs are entitled to declarations, and request that the Court make
12 declarations as to the following matters and as to other matters deemed appropriate by the
13 Court:

- 14 a. Defendants employed each Plaintiff.
15 b. Defendants are engaged in an enterprise covered by the overtime provisions
16 of the FLSA.
17 c. Each Plaintiff individually is covered by the overtime provisions of the
18 FLSA.
19 d. Each Plaintiff was not an exempt employee pursuant to the FLSA.
20 e. Defendants failed and refused to make payments of overtime compensation
21 to each Plaintiff, in violation of the provisions of the FLSA.
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1 f. Defendants' failures to pay overtime compensation to each Plaintiff were
2 willful.

3 g. Each Plaintiff is entitled to damages in the amount of overtime
4 compensation not paid by Defendants at the rate of one and one-half times
5 each Plaintiff's regular rate of pay.

6 h. Each Plaintiff is entitled to an equal amount as liquidated damages.

7 i. Each Plaintiff is entitled to recover his costs and a reasonable attorney's fee
8 incurred in prosecuting his claim.
9

10 85. It is in the public interest to have these declarations of rights recorded as each
11 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and
12 settling the legal relations at issue, preventing future harm, and promoting the remedial
13 purposes of the FLSA.

14 86. The declaratory judgment action further terminates and affords relief from
15 uncertainty, insecurity, and controversy giving rise to the proceeding.

16 WHEREFORE, Plaintiffs respectfully request that judgment be entered in their
17 favor against Defendants:

18 a. Declaring, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§
19

20 2201-02, that the acts and practices complained of herein are in

21 violation of the overtime and wage provisions of the FLSA;

22 b. Awarding Plaintiffs their reasonable attorney's fees and the costs and

23 expenses of the litigation pursuant to the FLSA; and

24 c. For such other and further relief as the Court deems just and proper
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1
2 Dated: November 3, 2015

3 Respectfully submitted,

4 **PHILLIPS DAYES NATIONAL EMPLOYMENT LAW**
5 **FIRM PC**

6 By: /s/ Trey Dayes
7 Trey Dayes
8 Attorney for Plaintiffs
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